

## CCRB INVESTIGATIVE RECOMMENDATION

|  |  |  |   |                                    |                                 |
|--|--|--|---|------------------------------------|---------------------------------|
| Investigator:<br>Bria Thomas                     | Team:<br>Squad #16                     | CCRB Case #:<br>202105381                  | <input type="checkbox"/> Force                        | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S.   |
|  |  |  | <input checked="" type="checkbox"/> Abuse             | <input type="checkbox"/> O.L.      | <input type="checkbox"/> Injury |
| Incident Date(s)<br>Thursday, 09/09/2021 2:45 PM | Location of Incident:<br>1963 Broadway | 18 Mo. SOL<br>3/9/2023                     | Precinct:<br>20                                       |                                    |                                 |
| Date/Time CV Reported<br>Fri, 09/10/2021 8:17 AM | CV Reported At:<br>CCRB                | How CV Reported:<br>Call Processing System | Date/Time Received at CCRB<br>Fri, 09/10/2021 8:17 AM |                                    |                                 |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
|                    |      |              |
|                    |      |              |
|                    |      |              |

| Witness(es) | Home Address |
|-------------|--------------|
|             |              |

| Subject Officer(s) | Shield | TaxID  | Command |
|--------------------|--------|--------|---------|
| 1. CPT Neil Zuber  | 00000  | 931483 | 020 PCT |

| Witness Officer(s)      | Shield No | Tax No | Cmd Name |
|-------------------------|-----------|--------|----------|
| 1. PO William Irwin     | 05018     | 944669 | 020 PCT  |
| 2. PO Nancy Correa      | 03957     | 965010 | 020 PCT  |
| 3. PO Yelena Ast        | 19612     | 958269 | 020 PCT  |
| 4. PO Rawdi Ali         | 15811     | 963844 | 020 PCT  |
| 5. PO Michael Feinman   | 31007     | 968403 | 020 PCT  |
| 6. PO Francisco Roa     | 18310     | 947406 | 020 PCT  |
| 7. PO Armando Perez     | 14643     | 943665 | 020 PCT  |
| 8. PO Adam Neri         | 05351     | 932194 | 020 PCT  |
| 9. SGT Joseph Buck      | 00255     | 950122 | 020 PCT  |
| 10. PO Kevin Schropfer  | 26098     | 964284 | 020 PCT  |
| 11. PO Jerry Hernandez  | 02132     | 965749 | 020 PCT  |
| 12. PO Brian Mulkern    | 13430     | 921019 | 020 PCT  |
| 13. PO Jorge Bravomoran | 01382     | 964403 | FTU 4    |

| Officer(s)       | Allegation   | Investigator Recommendation |
|------------------|--|-----------------------------|
| A.CPT Neil Zuber | Abuse: Captain Neil Zuber stopped § 87(2)(b)                                 |                             |
| B.CPT Neil Zuber | Abuse: Captain Neil Zuber stopped § 87(2)(b)                                 |                             |
| C.CPT Neil Zuber | Abuse: Captain Neil Zuber stopped § 87(2)(b)                                 |                             |
| D.CPT Neil Zuber | Abuse: Captain Neil Zuber failed to provide § 87(2)(b) with a business card. |                             |
| E.CPT Neil Zuber | Abuse: Captain Neil Zuber failed to provide § 87(2)(b) with a business card. |                             |
| F.CPT Neil Zuber | Abuse: Captain Neil Zuber failed to provide § 87(2)(b) with a business card. |                             |

### Case Summary

On September 10, 2021, § 87(2)(b) filed this complaint with the CCRB via the call processing system.

On September 9, 2021, at approximately 2:45pm § 87(2)(b) and § 87(2)(b) were accused of shoplifting while in a Zara retail store located at 1963 Broadway in Manhattan. As § 87(2)(b) and § 87(2)(b) walked toward the exit of the store they were approached by Captain Neil Zuber who stopped them (**Allegation A: Abuse of Authority, § 87(2)(g)**) (**Allegation B: Abuse of Authority, § 87(2)(g)**) (**Allegation C: Abuse of Authority, § 87(2)(g)**). At the conclusion of the stop, Captain Zuber failed to provide § 87(2)(b) and § 87(2)(b) with a business card (**Allegation D-F: Abuse of Authority, § 87(2)(g)**). § 87(2)(b) and § 87(2)(b) were not arrested, nor did they receive summonses as a result of this incident.

The CCRB obtained surveillance footage of the incident from Zara Corporation (**Board Review 02**). The investigation also obtained body worn camera footage of this incident (**Board Review 03**).

### Findings and Recommendations

#### **Allegation (A) Abuse of Authority: Captain Neil Zuber stopped § 87(2)(b)**

During his CCRB interview, § 87(2)(b) stated that he and his two cousins, § 87(2)(b) and § 87(2)(b) went to the Zara retail store. § 87(2)(b) wore a blue long sleeve polo shirt, polo shorts, Sperry shoes and a scully cap. § 87(2)(b) wore jeans, sneakers, a shirt, and a pink baseball hat. § 87(2)(b) wore jeans, a sweater, and a baseball cap. After making a purchase within the store they turned to exit. Upon exiting Captain Zuber entered the store and aggressively told them to put their items down and step to the side. Shortly later, Captain Zuber stated that officers had gotten a call regarding a person with a “pink hat” stealing (**Board Review 15**).

§ 87(2)(b) provided a telephone number for § 87(2)(b) but she did not respond to telephone calls and voicemail messages. A search for contact information for § 87(2)(b) yielded negative results (**Board Review 10**). § 87(2)(b) declined to participate in the investigation (**Board Review 11**).

Captain Zuber testified to the CCRB that he responded to a 10-32 (report of shoplifting) at Zara while he was on his way to Lincoln Center. During his tour Captain Zuber was the commanding officer for the 20<sup>th</sup> precinct. Captain Zuber was working alone and arrived at the Zara store approximately one minute after the call. He did not remember any details of the call. As Captain Zuber entered the store, a security guard had already stopped the shoplifting suspects. Captain Zuber spoke briefly with the security guard, who confirmed which people were the subject of the shoplifting call. The alleged shoplifters stood off to the left of the entrance doors. Captain Zuber did not remember the specifics of the alleged subjects of the call. Captain Zuber then interacted with the individuals who had been stopped as he waited for other officers to arrive. The group was not allowed to leave the store at the time, because the security guard had already stopped them. Captain Zuber did not remember asking the group to put their bags down and step to the side (**Board Review 14**).

The investigation obtained a recording of a 911 call placed on September 9, 2021, at 3:30pm, associated with this incident. A 911 caller, who identified himself only by the surname § 87(2)(b) reported that there were potential shoplifters inside a Zara retail store. § 87(2)(b) stated that the shoplifters were a 6'1" Black male wearing a white button-down shirt with graphics and a royal

blue hat with graphics; a 5'9" Black male wearing a green hat; a 5'10" male; and a 5'8" Black female wearing a pink hat with white lettering, white shirt, blue denim pants, black leather slippers, and an orange hoodie (**Board Review 05**).

The investigation obtained video footage from Zara. The footage does not contain a native timestamp and does not contain audio. At 51:42 in the video player's running time, a security guard dressed in a black suit positions himself near the entranceway. Starting at 01:01:38 of the video player's running time, the footage depicts the security guard and a Zara employee standing in front of the entrance/exit way of the store. The employee appears to be engaged in a telephone call. During this time no shoppers were in the front of the store and foot traffic was minimal. At 01:02:24, Captain Zuber is first seen on camera as he enters the first of two glass doors that lead into the store. At 01:02:29, Captain Zuber stands in the vestibule between the two glass doors and crosses his hand in front of his body while looking into the store. At 01:02:32, Captain Zuber enters the second door leading into the store. At the same time, § 87(2)(b) and § 87(2)(b) walk towards the exit. § 87(2)(b) and § 87(2)(b) are dressed in dark colored clothing and are wearing hats. § 87(2)(b)'s hat is pink. Due to the grainy footage the exact color and style of everyone's clothing is unclear. § 87(2)(b) and § 87(2)(b) have brown paper bags with the Zara logo on them. Neither of the Zara employees appear to speak to Captain Zuber, § 87(2)(b) or § 87(2)(b). The Zara employees do not gesture at § 87(2)(b) or § 87(2)(b) they do not gesture towards Captain Zuber, and they do not point at anyone. Captain Zuber points to the side of the entrance/exit way. § 87(2)(b) and § 87(2)(b) walk to the side. The interaction between § 87(2)(b) and Captain Zuber lasts for about two minutes before additional officers respond (**Board Review 02**).

The initial stop of § 87(2)(b) and § 87(2)(b) was conducted by Captain Zuber. Footage of the interaction was not captured on video as Captain Zuber was not equipped with BWC. The reasoning why Captain Zuber did not have BWC was not addressed during his CCRB interview. The only BWC footage obtained by the investigation depicted interactions with the civilians after the stop had been initiated.

A review of Sgt. Buck's BWC at 01:29 of the video player's running time displays a full body profile of § 87(2)(b). § 87(2)(b) is a black male wearing a gray newspaper boy hat, a navy-blue long sleeve shirt and shorts, and khaki-colored shoes. At 01:34, a full body profile of § 87(2)(b) reveals a Black male in a dark blue hoodie, olive green baseball cap, dark colored jeans, gray Nike sneakers and a black mask covering the lower half of his face. At 02:20, a full body profile of § 87(2)(b) reveals a black female in a pink hat with white lettering wearing a white tank top, red shoulder purse, burnt orange sweater, and dark colored jeans (**Board Review 03**).

According to People v. DeBour, 40 N.Y.2d 210 (1976), "Where an officer entertains a reasonable suspicion that a particular person has committed, is committing, or is about to commit a felony or misdemeanor, the CPL [criminal procedure law] authorizes a forcible stop of that person" (**Board Review 06**).

New York Penal Law 155.25 states a person is guilty of petit larceny when he steals property (**Board Review 07**). This offense is considered a class A misdemeanor.

§ 87(2)(g)

**Allegation (B) Abuse of Authority: Captain Neil Zuber stopped § 87(2)(b)**

**Allegation (C) Abuse of Authority: Captain Neil Zuber stopped § 87(2)(b)**

As per Allegation A, there was a 911 call placed by an identified caller who provided a description of potential shoplifters inside the Zara clothing store. The 911 caller provided the following descriptions for the three male shoplifters: a 6'1" Black male, white button-down shirt with graphics and a royal blue hat with graphics; a 5'9" Black male wearing a green hat; and a 5'10" male. As per Allegation A, § 87(2)(b) is a Black male who was wearing a gray newspaper boy hat, a navy-blue long sleeve shirt and shorts, and khaki-colored shoes. § 87(2)(b) is a black male who was wearing a dark blue hoodie, olive green baseball cap, dark colored jeans, gray Nike sneakers and a black mask covering the lower half of his face.

A 2018 study by the United States Centers for Disease Control and Prevention found that the average height for American men is 5'9" (**Board Review 19**).

The video footage from Zara starting at 01:04:27 of the video player's running time, depicts a security guard and an unidentified individual – a Black male wearing a blue hat, a white shirt with prints, and dark-colored pants – walk over to a side of the store adjacent to where § 87(2)(b) and § 87(2)(b) were stopped by Captain Zuber. At 01:04:40, the security guard looks into the unidentified individual's shopping bag and sticks his hand inside the bag. At 01:04:52, four officers walk into the store. At 01:04:57, the unidentified individual wearing a blue hat exits the Zara store (**Board Review 02**).

As noted under Allegation A, Captain Zuber informed the CCRB that he did not remember any of the specifics of the call nor the specifics of the alleged subjects of the call. When he entered the store, Captain Zuber said that he encountered the security guard and spoke with the guard, asking him if he was okay. However, he did not recall the exact contents of the conversation but noted that the guard confirmed which people were the subject of the shoplifting call. After stopping the group, Captain Zuber waited for additional officers to arrive. While he waited, he learned from a Zara employee that there were other individuals in the store who had allegedly stolen items and the actual perpetrators of the larceny had walked right past him and responding officers with stolen merchandise (**Board Review 14**).

The investigation located three UF 250 Stop Reports completed in regard to this incident—Report # STP-2021-020-§ 87(2)(b), STP-2021-020-§ 87(2)(b), and STP-2021-020-§ 87(2)(b) (**Board Review 16**). The reports were completed by Officer Jorge Bravomorán. The report narrative for STP-2021-020-§ 87(2)(b) notes: "At approximately 1530 inside 1963 Broadway a radio run 10-32 Larceny in progress came over with a verified caller. The description given by the caller was a male Black wearing a blue hat with graphics [sic] on it. I was informed by Captain Zuber that at approximately one minute later he approached male and stopped him at location. Upon further investigation it was concluded male did not remove property from location. I offered male a contact card but he refused to accept card." The narrative of Report STP-2021-020-§ 87(2)(b) references a Black male with a green hat; this report was determined to be in reference to § 87(2)(b). The narrative of Report STP-2021-020-§ 87(2)(b) references a Black female wearing a pink hat; the investigation determined to be in reference to § 87(2)(b).

People v. DeBour, 40 N.Y.2d 210 (1976), requires that officers have a particularized basis for reasonable suspicion (**Board Review 06**).

During People v. Hargroves, 296 A.D.2d 581, the court examined a case where officers received a report from a complainant that the complainant had been assaulted and robbed by a group of young black males, one of whom was wearing an orange coat or jacket. The officers stopped a group of

black males in the vicinity of the reported crime. The court determined that “even if the jacket worn by one member of the group could have been considered orange..., this general description was not sufficient to permit the police to detain and then exhibit the defendant, among others, to the complainant,” and concluded that the officers lacked reasonable suspicion to conduct the stop **(Board Review 13)**.

In People v. Lynch, 285 A.D.2d 518, the courts examined a stop based upon a “radio transmission providing a general description of the perpetrators of a crime and the defendant’s location, the close proximity of the defendant to the site of the crime, the brief period of time between the crime and the discovery of the defendant near the location of the crime, and the detective’s observation of the defendant, who matched the radio-transmitted description of one of the perpetrators.” The courts determined that this set of factors provided the officers with reasonable suspicion to stop the defendant “based on the totality of the circumstances” **(Board Review 20)**.

§ 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED]

**Allegation (D) Abuse of Authority: Captain Neil Zuber failed to provide § 87(2)(b) with a business card.**

**Allegation (E) Abuse of Authority: Captain Neil Zuber failed to provide § 87(2)(b) with a**

**business card.**

**Allegation (F) Abuse of Authority: Captain Neil Zuber failed to provide § 87(2)(b) with a business card.**

In his testimony to the CCRB, § 87(2)(b) noted that he asked for Captain Zuber's name. Captain Zuber pointed towards his shield, which read "Zuber," and told § 87(2)(b) that he was a captain. § 87(2)(b) wrote down Captain Zuber's information. An officer identified by the investigation as PO Irwin provided his business card to § 87(2)(b) **(Board Review 15).**

Sgt. Buck, PO Ali, PO Feinman, PO Roa, PO Perez, PO Neri, PO Schropfer, PO Mulkern, PO Correa, PO Ast, and PO Hernandez were also identified by their BWC as being present at the scene.

A review of PO Irwin's BWC at 08:10 of the video player's running time, depicts PO Irwin offering a business card that reads "NYPD" (the rest of the wording is ineligible) to § 87(2)(b) and § 87(2)(b) § 87(2)(b) takes the card while § 87(2)(b) does not. During this interaction § 87(2)(b) § 87(2)(b) is not present. § 87(2)(b) and § 87(2)(b) also were not observed requesting any identifying information from the officers' present **(Board Review 03).**

Captain Zuber testified that he did not issue any business cards to any individuals as he was not required to have business cards on him because he was not assigned to patrol **(Board Review 14).**

Administrative Guide 304-11 notes that uniformed members of service should offer a business card to members of the public upon conclusion of certain law enforcement activities that do not result in an arrest or summons, and specifically lists stops as a law enforcement activity that require an officer to provide their business card. The Administrative Guide does not note that the requirement to carry business cards is obviated if an officer is not on patrol **(Board Review 08).**

§ 87(2)(g)

[REDACTED]

**Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party.
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- Captain Zuber has been a member of service for 20 years and has been a subject in 16 CCRB complaints and 46 allegations, of which 4 were substantiated:
  - 201303672 involved a substantiated allegation of Search (of a person) against Captain Zuber. The Board recommended Charges and the NYPD imposed no penalty.

- 201509988 involved a substantiated allegation of Retaliatory arrest against Captain Zuber. The Board recommended Command Discipline A and the NYPD imposed no penalty.
- 2019060306 involved substantiated allegations of Physical Force and Retaliatory Arrest against Captain Zuber. The Board recommended Charges. There were no disciplinary actions noted by the NYPD.

## Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- § 87(2)(b) filed a Notice of Claim with the City of New York claiming pain and suffering including emotional distress, loss of enjoyment of life, economic loss, and violation of their rights and seeking \$10,000,000.00 as redress (**Board Review 09**). The Notice of Claim was filed by § 87(2)(b). The firm was contacted on August 26, 2022, and on September 19, 2022, to determine whether a 50H hearing has been held. § 87(2)(b) informed that undersigned that § 87(2)(b) obtained new counsel under § 87(2)(b). Contacts attempts were made to the new firm, however to date, no response has been received.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Squad: 16

|               |                    |                                 |                         |
|---------------|--------------------|---------------------------------|-------------------------|
| Investigator: | <u>Bria Thomas</u> | <u>Investigator Bria Thomas</u> | <u>November 1, 2022</u> |
|               | Signature          | Print Title & Name              | Date                    |

Squad Leader: Carlmais Johnson      IM Carlmais Johnson      November 16, 2022  
Signature      Print Title & Name      Date

Reviewer: \_\_\_\_\_

|           |                    |      |
|-----------|--------------------|------|
| Signature | Print Title & Name | Date |
|-----------|--------------------|------|